

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Robert Bennett,
Petitioner

v.

Case No. 1:07-cv-889

Warden, Ross Correctional
Institution,
Respondent

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 16, 2008 (Doc. 17).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

- 1) Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254

is **DENIED** with prejudice.

2) A certificate of appealability will not issue with respect to Grounds One and Two of the petition which this Court has concluded are waived and thus barred from review on procedural grounds because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling” as required under the first prong of the *Slack* standard.¹

3) This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). Petitioner remains free to apply to proceed *in forma pauperis* in this Court of Appeals.

SO ORDERED.

Date: January 12, 2009

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court

¹Because this Court finds that petitioner has not met the first prong of the *Slack* standard, it need not address the second prong of *Slack* as to whether “jurists of reason” would find it debatable whether petitioner stated a valid constitutional claim. See *Slack*, 529 U.S. at 484.